

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MISTER COLEMAN,

Plaintiff,

v.

JAMES DZURENDA, *et al.*,

Defendants.

Case No. 3:24-cv-00317-MMD-CLB

ORDER

On October 28, 2024, the Court granted Plaintiff's motion to voluntarily dismiss this action. (ECF Nos. 9, 10, 12). However, on November 22, 2024, Plaintiff submitted a motion to terminate the previous request to withdraw his complaint and requested to proceed with this case. (ECF No. 13 ("Motion").) In the Motion, Plaintiff explains that another inmate, Marque Gardeley, who had originally helped Plaintiff with this case, filed the motion to withdraw Plaintiff's complaint because Plaintiff refused to give Gardeley money. (*Id.* at 2).

A party can seek reconsideration under Federal Rule of Civil Procedure 60(b). "Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). The Court may relieve a party from a final judgment, order, or proceeding for a "reason that justifies relief." Fed. R. Civ. P. 60(b)(6).

The Court interprets Plaintiff's motion as a Rule 60(b) motion to relieve him from a final judgment. Plaintiff asserts that he did not file the request to voluntarily withdraw his case and would like to reopen his case. The Court notes that, although Gardeley did not sign his name to acknowledge that he assisted Plaintiff in preparing his complaint,

1 Gardeley did provide his inmate number, NDOC #1099633. (ECF No. 1-1 at 24). The
2 handwriting in the complaint is the same handwriting in the motions to voluntarily dismiss.
3 (ECF Nos. 1-1, 9, 10). And notably, the handwriting in the instant Motion is different from
4 the other filings in this action and appears to be in Plaintiff's own handwriting. Accordingly,
5 the Court grants Plaintiff's Rule 60(b) motion and reopens this case. It would be manifestly
6 unjust to close a case based on a motion that Plaintiff neither authorized nor wrote. The
7 Court reopens this case and will screen the complaint in due course.

8 It is therefore ordered that Plaintiff's motion to terminate motion to withdraw
9 complaint (ECF No. 13) is granted.

10 The Clerk of Court is further directed to reopen this case and reinstate Plaintiff's
11 application to proceed *in forma pauperis* (ECF No. 1) and motion for appointment of
12 counsel (ECF No. 3) as active pending motions.

13 DATED THIS 26th Day of November 2024.



14
15
16 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

17
18
19
20
21
22
23
24
25
26
27
28